

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

WARREN DURHAM, JR.,  
Plaintiff,  
  
v.  
  
CITY AND COUNTY OF ERIE, et al,  
Defendants.

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C.A. No. 04-297 Erie

**ORDER**

AND NOW, this 12th day of July, 2006;

Defendant Tackett having filed a Motion for Summary Judgment (Doc. #58) and Brief (Doc. #59) in support thereof;

IT IS HEREBY ORDERED that plaintiff shall be allowed until July 28, 2006, to respond to the motion. Plaintiff is advised that his response to the motion may include opposing or counteraffidavits (executed by the plaintiff or other persons) which have either been sworn to under oath (notarized) or include at the end of the document, immediately before the plaintiff's signature, the following in accordance with 28 U.S.C. § 1746: "I declare under penalty of perjury that the foregoing is true and correct. Executed this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_."

IT IS FURTHER ORDERED that all affidavits, opposing or counteraffidavits must be based upon the personal knowledge of the person executing the affidavit; that no affidavit, amended complaint, pretrial narrative or other document containing plaintiff's allegations will be considered when determining the motion for summary judgment unless it has been notarized before a notary public or unless it contains a declaration under penalty of perjury as set forth above; that plaintiff may attach to his affidavit copies of any depositions, answers to interrogatories, institutional records or other documents he wishes this court to consider when addressing the summary judgment motion; and that the motion for summary judgment will be

evaluated under the procedure standard set forth in Rule 56 of the Federal Rules of Civil Procedure; and that failure to respond may result in entry of judgment against him.

IT IS FURTHER ORDERED THAT plaintiff shall serve on counsel for defendants a copy of each pleading or other document submitted for consideration by the court and shall include with each document filed a certificate stating the date a true and correct copy of the pleading or document was mailed to each attorney. Any pleading or other document received by a district judge or magistrate judge which has not been filed with the Clerk or which fails to include a certificate of service shall be returned to the plaintiff by the Clerk.

IT IS FURTHER ORDERED that the parties are allowed ten (10) days from this date to appeal this order to a district judge pursuant to Rule 72.1.3(B) of the Local Rules for Magistrates. Failure to appeal within ten (10) days may constitute waiver of the right to appeal.

s/Susan Paradise Baxter  
SUSAN PARADISE BAXTER  
United States Magistrate Judge

cc: all parties of record (lw)